

Message Text

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UNCLAS SECTION 1 OF 2 TUNIS 2530

USDOC FOR CAGNE

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TAGS: BEXP, BENC, BGEN, TS
SUBJ: CONTRACTING RULES, PRACTICES AND BARGAINING TECHNIQUES
IN TUNISIA

REF: 76 STATE A-5955

1. FOLLOWING RESPONSES ON TUNISIA ARE CODED TO QUESTIONS
POSED IN REFTEL:

PRICE: FINAL GOVERNMENT CONTRACTS ARE ALMOST ALWAYS IN FIXED PRICES. WITH FOREIGN CONTRACTORS, THE TUNISIAN GOVERNMENT INSISTS ON FIXED PRICE BIDS. WITH LOCAL CONTRACTORS THERE HAVE BEEN INSTANCES IN WHICH ESCALATION CLAUSES HAVE BEEN NEGOTIATED. IN THE CASE OF THE 300 MW STEAM POWER PLANT IN SOUSSE, THE ORIGINAL NEGOTIATION WAS ON THE BASIS OF 50 PERCENT FIXED PRICE AND 50 PERCENT WITH ESCALATION CLAUSE, BUT THE FINAL AGREEMENT WAS CONCLUDED ON 100 PERCENT FIXED PRICE. PRACTICE IN PRIVATE SECTOR DIFFERS FROM PUBLIC SECTOR IN THAT PRIVATE SECTOR DOES NOT FOLLOW STRICT RULES. THE BUYER CAN NEGOTIATE THE ENTIRE DEAL WITH THE SUPPLIER, BUT ALL PAYMENTS IN FOREIGN EXCHANGE MUST BE APPROVED BY THE CENTRAL BANK. ALL CONTRACTS MUST BE APPROVED BY APPROPRIATE GOVERNMENTAL AUTHORITIES TO BECOME VALID.

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3. BID AND PERFORMANCE BONDS: BID AND PERFORMANCE GUARANTEES MUST BE PAID IN CASH OR SURETY BONDS. BID BONDS CANNOT EXCEED ONE PERCENT OF THE PRESUMED CONTRACT PRICE. PERFORMANCE BONDS VARY BETWEEN 5 AND 10 PERCENT OF THE ESTIMATED VALUE OF THE CONTRACT. WHILE REQUIRED GUARANTEES ARE NOT UNIFORM AMONG ALL CONTRACTING AGENCIES OF THE GOVERNMENT, THE PERCENTAGE REQUIRED IN THE DOCUMENTATION IS RARELY NEGOTIABLE. BID AND

PERFORMANCE BOND REQUIREMENTS ARE NOT REDUCED WHEN CONTRACTOR IS IN JOINT VENTURE WITH LOCAL PARTNER. IMPORTED MACHINERY AND EQUIPMENT CANNOT BE CONSIDERED AS AN OFFSET AGAINST BONDS. SURETY BONDS ARE ACCEPTABLE IN TUNISIA.

3. FORCE MAJEURE: FORCE MAJEURE IS NORMALLY DEFINED AS A NATURAL DISASTER, E.G. EARTHQUAKE, FAMINE, CIVIL WAR. NEITHER LABOR DISPUTES NOR DELIVERY DELAYS DUE TO PORT CONGESTION ARE CONSIDERED CIRCUMSTANCES OF FORCE MAJEURE. EXCEPT IN VERY EXCEPTIONAL CASES, THERE IS NO SCOPE FOR NEGOTIATING LANGUAGE OF FORCE MAJEURE.

4. TRAINING: TENDERS FOR COMPLICATED EQUIPMENT USUALLY PROVIDE FOR TRAINING OF LOCAL PERSONNEL ON THE SPOT IN TUNISIA. IN SOME CASES MIDDLE-LEVEL AND SUPERVISORY TECHNICIANS HAVE TO BE TRAINED IN SUPPLIER'S PLANT. TRAINING EQUIPMENT CAN BE IMPORTED AND REEXPORTED ON DUTY-FREE BASIS (TEMPORARY ADMISSION FOR SIX MONTHS, RENEWABLE). THE PERCENTAGE OF COST THE SUPPLIER IS EXPECTED TO BEAR IS SPECIFIED AS PART OF THE BID.

5. FOREIGN AND DOMESTIC WORKERS: IN GENERAL, CONTRACTORS ARE EXPECTED TO MAINTAIN A CERTAIN BALANCE OF LOCAL LABOR VIS-A-VIS FOREIGN LABOR (NO MORE THAN AROUND 40 PERCENT FOREIGN). IN SOME AREAS, THIS PROPORTION GOES UP TO 60 PERCENT - E.G. CONSULTING FIRMS. TUNISIA IS AN EXPORTER OF LABOR (TO EUROPE - FRANCE, WEST GERMANY, AND SOME ARAB COUNTRIES A.E.G. LIBYA) AND HAS SUBSTANTIAL DOMESTIC UNEMPLOYMENT. THE BASIC LABOR SITUATION IS AS FOLLOWS:
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- UNSKILLED LABOR, READILY AVAILABLE?

- SEMI-SKILLED LABOR IN ADEQUATE QUANTITIES CAN BE LOCATED EASILY, AND IS TRAINABLE;

- SKILLED LABOR IN CERTAIN FIELDS, E.G. ELECTRICIANS, MECHANICS, CAN BE LOCATED ONLY WITH SOME DIFFICULTY AND AT HIGH WAGES FOR TUNISIA.

WAGES FOR SKILLED WORKERS (MECHANICS, CARPENTERS, BRICKLAYERS) INCLUDING ALL CHARGES ARE AROUND \$10-13 PER DAY BUT CAN BE NEGOTIATED. MINIMUM HOURLY WAGE RATE (SMIG) WAS RAISED AT THE BEGINNING OF THIS YEAR TO 193 MILLIMES (\$0.40), OR TD 40 PER MONTH (\$95) FOR A 48-HOUR WEEK. FOR EXPATRIATES, SUITABLE HOUSING, FOOD, CLOTHING, MEDICAL AND DENTAL CARE AND RECREATIONAL ACTIVITIES ARE AVAILABLE IN LARGE CITIES SUCH AS TUNIS, BIZERTE, SOUSSE, SFAX, GABES, DJERBA AND MONASTIR. THE CONTRACTOR NORMALLY PAYS A HOUSING AND A DISPLACEMENT

ALLOWANCE (SEE FACTSHEET ON LIVING AND WORKING IN TUNIS,
76 TUNIS A-091).

EXPATRIATE EMPLOYEES ARE SUBJECT TO LOCAL INCOME TAXES. PERSONAL
EFFECTS NOT RPT NOT INCLUDING AN AUTOMOBILE ARE EXEMPT FROM
IMPORT DUTIES. WORK AND RESIDENCE PERMITS ARE NOT CONSIDERED
A PROBLEM FOR EMPLOYEES OF CONTRACTORS PERFORMING AUTHORIZED
PROJECTS. THE MINISTRY OF SOCIAL AFFAIRS ISSUES THE PERMIT;
A VISA FROM THE MINISTRY OF THE INTERIOR IS ALSO REQUIRED FOR
EXTENDED PERIODS. CONTRACTORS SHOULD BE FAMILIAR WITH TUNISIAN
LEGISLATION CONCERNING WORK RULES, WAGES AND TAXES. THERE ARE
NO KOREAN, FILIPINO OR PAKISTANI WORKERS IN TUNISIA.

6. ARBITRATION: CONTRACTS PROVIDE FOR ARBITRATION, USUALLY
UNDER TUNISIAN LAW IN TUNISIAN COURTS. INTERNATIONAL ARBITRATION
MAY BE SPECIFIED. THE INTERNATIONAL CHAMBER OF COMMERCE IN
GENEVA IS THE BODY TO WHICH DISPUTING PARTIES USUALLY REFER
BUT ULTIMATE RECOURSE IS TO TUNISIAN COURTS.

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7. LOCAL AGENTS AND REPRESENTATIVES:
LOCAL AGENTS AND REPRESENTATIVES ARE ALLOWED AND RECOMMENDED,
ESPECIALLY WHERE COMPLICATED EQUIPMENT WILL REQUIRE AFTER-SALES
SERVICE. COMMISSION AND FEES VARY ACCORDING TO NATURE AND
COMPLEXITY OF CONTRACT, GENERALLY BETWEEN 0.5 PERCENT AND
5. PERCENT.

8. LOCAL PARTNERSHIPS/CORPORATIONS: PROS AND CONS OF ESTABLISHING LOCAL PARTNERSHIP OR CORPORATION DEPEND UPON TYPE OF VENTURE. SUCH A PARTNERSHIP IS SUBJECT TO TUNISIAN BUSINESS TAXES FROM WHICH FOREIGN FIRMS IN TUNISIA ARE OTHERWISE EXEMPT. IN GENERAL, PARTNERSHIP MUST BE AT LEAST 51 PERCENT TUNISIAN.

9. GRADUATED OR ADVANCE PAYMENTS: ADVANCE PAYMENTS ARE SPECIFIED IN TENDER DOCUMENTS. USUALLY, 20 PERCENT IS APDI AT SIGNING OF CONTRACT, THEN, ACCORDING TO TIME NEEDED TO IMPLEMENT PROJECT, TWO INSTALLMENTS OF 30 PERCENT EACH ARE PAID AND REMAINING 20 PERCENT IS RETAINED AS GUARANTEE THAT REQUIREMENTS SPECIFIED IN TENDER DOCUMENTS ARE MET. THIS BALANCE IS PAID SIX MONTHS TO ONE YEAR AFTER IMPLEMENTATION OF PROJECT.

10. LOCAL SUPPLY: GOT FAVORS CONTRACTORS WHO INCORPORATE LOCAL UNCLASSIFIED

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SOURCES IN THE BID, BUT THIS IS NOT A NECESSARY CONDITION. LOCAL SUPPLY IS INCLUDED IN THE OVERALL CONTRACT. FOR DETAILS ON ESCALATION, BID AND PERFORMANCE BONDS, FORCE MAJEURE, ETC. SEE PARAGRAPH 2 AND 3 ABOVE.

11. BONDED AREAS: NO "BONDED AREAS" HAVE BEEN ESTABLISHED TO ELIMINATE DELAY IN PORT.

12. LANGUAGE AND UNITS OF MEASUREMENT: THE PREFERRED LANGUAGE FOR BIDS IS FRENCH. IN SOME INSTANCES (TECHNICAL PROJECTS) FRENCH IS REQUIRED. METRIC UNITS ARE REQUIRED BY LAW.

13. CORPORATE TAXES: FOREIGN CONTRACTORS ARE REQUIRED TO PAY THE FOLLOWING TAXES: SERVICE TAX (TPS); REGISTRATION TAX; TAXES ON SALARIES, WAGES AND PENSIONS; TAX ON EARNINGS. A RESIDENT COMPANY WOULD ALSO PAY BUSINESS INCOME TAX.

14. MACHINERY AND EQUIPMENT: CUSTOMS DUTIES ARE WAIVED ON MACHINERY, EQUIPMENT AND SUPPLIES IMPORTED FOR INVESTMENT PROJECTS AGREED BY THE API (AGENCE DE PROMOTION DES INVESTISSEMENTS). OTHER ARRANGEMENTS CAN BE NEGOTIATED WHERE GOODS ARE TO BE REEXPORTED. USED MACHINERY AND EQUIPMENT MAY BE SOLD LOCALLY PROVIDED CUSTOMS DUTIES ARE PAID AND AUTHORIZATION FOR IMPORTATION IS OBTAINED. SUPPLY OF SPARE PARTS FOR MACHINERY IS NEGOTIATED CASE BY CASE.

16. NEGOTIABLE CONTRACT CLAUSES: FINANCING, AFTER SALES SERVICES, ARBITRATION WOULD BE NEGOTIABLE. MINIMUM WAGES EXCHANGE, CONTROL, TAXATION ARE NOT NEGOTIABLE.

17. THE COMPLETION: U.S. COMPANIES SHOULD BE MADE AWARE OF THE FACT THAT THE TUNISIAN GOVERNMENT, AND PRIVATE TUNISIAN PURCHASERS OF HIGH VALUE GOODS AND/OR SERVICES PREFER FIXED PRICE BIDS AND FIXED INTEREST RATE FINANCING PACKAGES. FURTHERMORE, EUROPEAN COMPETITORS ARE USUALLY PREPARED TO QUOTE FIXED PRICES AND CAN USUALLY OFFER GOVERNMENT BACKED FIXED RATE CREDIT

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IF NECESSARY TO WIN A CONTRACT. HEAVY FRENCH INFLUENCE (IN THE FORM OF ADVISORS OR CONSULTANTS IN MANY GOVT MINISTERIES AND STATE CORPORATIONS) SKEWS CURVE TOWARD EUROPEAN SOURCES. DESPITE THESE PROBLEMS, U.S. COMPANIES HAVE BEEN SUCCESSFUL IN WINNING PROJECTS IN TUNISIA, USUALLY BY DISPLAYING GREAT PATIENCE AND DETERMINATION. JAPAN IS NOT A MAJOR ELEMENT IN THE TUNISIAN MARKET FOR THE MOMENT.

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